

**REMARKS**

In the Office Action dated September 22, 2005, pending Claims 1-16 were rejected and the rejection made final. In response Applicants have filed herewith a Request for Continued Examination and have amended independent Claim 1. Applicants intend no change in the scope of the claims by the changes made by this amendment. It should be noted these amendments are not in acquiescence of the Office's position on allowability of the claims, but merely to expedite prosecution.

Applicants and the undersigned are most grateful for the time and effort accorded the instant application by the Examiner. An interview was requested with the Examiner and conducted on December 1, 2005. No agreement was made with regards to the claims during this interview. The Office is respectfully requested to reconsider the rejection and objection present in the outstanding Office Action in light of the following remarks.

Claims 1-16 were pending in the instant application at the time of the outstanding Office Action. Of these claims, Claim 1 is an independent claim; the remaining claims are dependent claims.

Claims 1-16 stand rejected under 35 US C § 101 as being directed to non-statutory subject matter. Claim 1 has been amended to address this issue, taking into consideration suggestions made by the Examiner in the outstanding Office Action. Reconsideration and withdrawal of this rejection is respectfully requested.

Claims 1-16 stand rejected under 35 USC § 102(e) as being anticipated by Herz et al. Reconsideration and withdrawal of this rejection is respectfully requested.

As best understood, the invention set forth by Herz contemplates a system with the ability to automatically determine which products a shopper would be most likely to buy, and which offers a vendor should make available to the shopper in order to maximize the vendor's profit (paragraph 0002, lines 1-5). The system constructs and updates shopper profiles based on specific demographic information and history of their shopping behavior (paragraph 0002, lines 5-9). These profiles are used to determine products and offers to present to shoppers (paragraph 0002, lines 9-13).

The price and product determination system of Herz is in stark contrast to the present invention. As discussed in the specification and in the independent claim, the instant invention uses configuration data provided by an Internet merchant that operates the web site to create models that reflect real-time market sensitivities. These models are then used to determine the prices and offers that are made available to customers. There is no teaching or suggestion in Herz of a model that reflects real-time market sensitivities. In fact, there is no teaching or suggestion in Herz of any type of real-time tracking or computation of information.

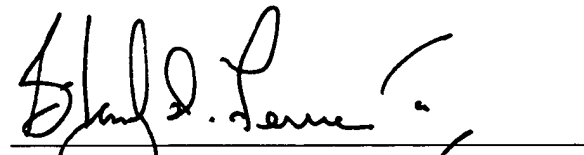
Thus, it is respectfully submitted that Herz et al. clearly falls short of present invention (as defined by the independent claims) in that, *inter alia*, it does not disclose receiving configuration data from an Internet merchant that operates the web site. Additionally, Herz et al do not disclose "randomly sampling visitors to the Internet website according to the configuration data **to create a model that is able to reflect real-time market sensitivities**". (emphasis added) Accordingly, Applicants respectfully submit that the applied art does not anticipate the present invention because, at the very

least, "[a]nticipation requires the disclosure in a single prior art reference of each element of the claim under construction." *W.L. Gore & Associates, Inc. v. Garlock*, 721 F.2d 1540, 1554 (Fed. Cir. 1983); *see also In re Marshall*, 198 U.S.P.Q. 344, 346 (C.C.P.A. 1978).

In view of the foregoing, it is respectfully submitted that independent Claim 1 fully distinguishes over the applied art and is thus allowable. By virtue of dependence from Claim 1, it is thus also submitted that Claims 2-16 are also allowable at this juncture.

In summary, it is respectfully submitted that the instant application, including Claims 1-16, is presently in condition for allowance. Notice to the effect is hereby earnestly solicited. Applicants' undersigned attorney would welcome further discussion with the Office in the event there are any further issues in this application.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Stanley D. Ference III", is written over a horizontal line.

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